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Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1984

No. 84-6270

JOHNNY GREEN, GAIL BLESSING, THERESA E. COVEYOU, GILDA MILLS, and JUDGE MILLS, on behalf of themselves, their children, and all others similarly situated,

Petitioners,

v.

AGNES MARY MANSOUR, Director, Michigan Department of Social Services,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appealsfor the Sixth Circuit

PETITIONERS' REPLY BRIEF

William Burnham
Wayne State University
Law School
468 West Ferry
Detroit, MI. 48202
313-577-3928

Paul D. Reingold
University of Michigan
Clinical Law Program
363 Legal Research Bldg.
801 Monroe Street
Ann Arbor, MI. 48109
313-665-2777

Attorneys for Petitioners

PETITIONERS' REPLY BRIEF

In section two of her brief, Respondent claims that the decision below is consistent with the decisions in Randall v. Lukhard, 729 F2d 966 (4th Cir. 1984)(en banc), Silva v. Vowell, 621 F2d 640 (5th Cir. 1980) and Beltran v. Myers, 701 F2d 91 (9th Cir. 1983).

Respondent's reading of Randall is in error. Respondent claims that the en banc 4th Circuit approved notice relief "as part of an order that also included prospective injunctive relief" against the state's application of the post-change federal law. Respondent's brief at 11, quoting Randall, 709 F2d 257, 269 (4th Cir. 1983), reversed in relevant part, 729 F2d 966, 967-969 (4th Cir. 1984)(en banc). In so arguing, Respondent relies upon the first panel's decision in the litigation. The en banc decision's conclusions on notice relief could not possibly have been based upon any injunctive relief addressed to post-change federal and state law since the en banc decision concluded that there was no conflict between post-change federal law and post-change Virginia law. See Randall, 729 F2d at 967-969.

As to Silva v. Vowell, supra, the fact that the lack of conflict between current federal law and current state law was caused by a change in federal law in the cases as bar is no basis for distinquishing the instant cases from Silva. The 6th Circuit's theory in Quern--that an injunction based on current federal law restraining the operation of current state law must exist since notice relief must be "ancillary" to that injunction--would apply whether that injunction is unavailable because of a change in federal law, because of a change in state law, or because of a combination of the two.* If Respondent means to argue that the change in federal law in the current cases retroactively invalidated any claims arising under prior federal law, she is incorrect. See Petition, p. 9, footnote 1.

* Contrary to what Respondent implies, in MWRO v. Dempsey below, the child care deduction case, there was both a change in federal law and a change in state law. Federal law has always required that child care expenses be deducted; OBRA simply placed a dollar limit on the deduction. The conflict between state and federal law, then, was only eliminated when Respondent's predecessor changed the state regulation to allow the deduction.

Respondents other attempts to show harmony between the decision of the 6th Circuit below and Silva v. Vowell must also fail. Similarly to her argument regarding Randall, discussed above, Respondent attempts to justify the notice relief approved in Silva as "ancillary" to the district court's "December 19, 1978 . . . summary judgment for the plaintiffs, invalidating Texas' 60-day eligibility requirement for AFDC." Respondent's brief at 12. The 5th Circuit in Silva could not possibly have had such an ancillary connection in mind since the very same decision upholding notice relief vacated that portion of the summary judgment upon which Respondent relies. 621 F2d at 649-650. The only portion of the district court's summary judgment to which notice relief could have been "ancillary" under Respondent's theory, was the portion related to the "light work" regulation. 621 F2d at 651. However, it was this regulation that had been changed to comply with federal law before entry of the summary judgment. 621 F2d at 647 and 654. Consequently, in Silva the 5th Circuit (1) approved the portion of the district court's summary judgment relating to the light work requirement despite the fact that the light work regulation had been changed to comply with federal law before that judgment was entered, and (2) held that notice relief to the class affected by the light work requirement would not be barred by the 11th amendment. 621 F2d at 651-654. This is precisely the same relief and the same circumstances for awarding it that faced the 6th Circuit below.

Respondent also argues that Beltran v. Myers, supra, is in harmony with the decision below because of the existence of a preliminary injunction in favor of a portion of the class. See Respondent's brief at pp. 8-9. There is, of course, no evidence that either the district court or the 9th Circuit Court of Appeals relied upon the existence of the preliminary injunction based upon post-change federal law to support the order for notice relief to remedy violations of the pre-change federal law. In any event, a preliminary injunction was entered in one of the two consolidated

cases considered by the 6th Circuit below. See Banas v. Dempsey, 742 F2d 277, 288 (6th Cir. 1984), appendix at p. A-22. Nonetheless, the 6th Circuit in Banas expressly rejected any contention that the notice relief ordered could be "ancillary" to the preliminary injunction. Id. Though there is a distinction between the preliminary injunction in Banas and the one in Beltran in that the former was "modified so that it would have no prospective effect after the change in law", 742 F2d at 288, appendix at A-22, this distinction should not matter if the 6th Circuit's reading of Quern is accepted. After all, by the time notice relief was ordered in Quern v. Jordan, the injunction to which the 6th Circuit would read notice relief as "ancillary" similarly had had no "prospective effect" for at least a year prior to the entry of the order for notice relief. See Petition p. 12 at Quern v. Jordan, 440 US 332, 348 note 20 (1979).

For all the above reasons, it is clear that there is a conflict on the issues at bar between the 6th Circuit decision below and the cited decisions of the Fourth, Fifth, and Ninth Circuits.

Respectfully submitted,

William Burnham
Wayne State University
Law School
468 West Ferry
Detroit, Michigan 48202
313-577-3928

Paul D. Reingold
University of Michigan
Clinical Law Program
363 Legal Research Building
801 Monroe Street
Ann Arbor, Michigan 48109
313-665-2777

Attorneys for Petitioners

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